IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

WP(C).No. 30168 of 2005(N)

PETITIONER:

P.X.JOSEPH, AGED 40, S/O.XAVIER,
PULLUPARAMBIL, ELAMAKKARA, KOCHI-682 026,
(CLR/SUBSTITUTE WORKER UNDER THE CORPORATION OF KOCHI, ERNAKULAM)

BY ADV. SRI.E.S.ASHRAF
SHRI.S.SHAJI

RESPONDENTS:
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1. **THE STATE OF KERALA, REPRESENTED BY ITS SECRETARY TO GOVERNMENT, LOCAL SELF GOVERNMENT DEPARTMENT, GOVERNMENT SECRETARIAT, TRIVANDRUM.**

2. **THE CORPORATION OF KOCHI, REPRESENTED BY ITS SECRETARY, OFFICE OF THE CORPORATION OF KOCHI, ERNAKULAM.**

3. **THE HEALTH OFFICER, CORPORATION OF KOCHI, ERNAKULAM.**

4. **THE SECRETARY, KALAMASSERY MUNICIPALITY, KALAMASSEY, ERNAKULAM.**

BY ADV. SRI.P.K.BABU, SC, COCHIN CORPN.
SRI.M.K.ABOOBACKER for R4
SRI.C.M.SURESH BABU,SC,COCHIN CORPORATION
SRI.K.ANAND, SC, COCHIN CORPN.
BY GOVERNMENT PLEADER SMT. LAKSHMI RANI for R1

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.30168/2005 N

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE IDENTITY CARD ISSUED FROM THE EMPLOYMENT EXCHANGE ERNAKULAM RENEWED FROM TIME TO TIME AND VALID UPTO 8/2008.**

EXT.P2: **COPY OF G.O.(MS) NO.91/2001/LSGD DTD. 29/03/01 ISSUED BY THE GOVERNMENT.**

EXT.P3: **COPY OF THE LIST OF CLR/SUBSTITUTE WORKERS MAINTAINED BY THE CORPORATION.**

EXT.P4: **COPY OF THE LIST OF CLR/SUBSTITUTE WORKERS MAINTAINED BY THE CORPORATION.**

EXT.P5: **COPY OF THE REQUEST MADE BY THE PETITIONER FOR EXPERIENCE CERTIFICATE.**

EXT.P6: **COPY OF THE REQUEST MADE BY THE PETITIONER BEFORE THE 2ND RESPONDENT.**

EXT.P7: **COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE GOVERNMENT.**

EXT.P8: **COPY OF THE NEWSPAPER REPORT APPEARED IN DESHABHIMANI DAILY DTD. 12/06/05.**

EXT.P9: **COPY OF THE PROCEEDING DTD. 22/05/06 ISSUED BY THE CORPORATION OF KOCHI.**

/TRUE COPY/

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K.K.DENESAN, J.

WP(C)No. 30168 OF 2005

Dated this the 14th February, 2007.

JUDGMENT

The facts as averred in the writ petition would go to show that the petitioner had been working as CLR/substitute worker under the Corporation of Kochi for the last more than 17 years. Pursuant to Ext.P2 order issued by the Government on 29.3.2001, the respondent-Corporation has published Ext.P4 list which contains the names of CLR workers/substitute workers who are entitled to be granted the benefit of regularisation according to their turn. Serial number allotted to the petitioner in Ext.P4 list is 301. It is averred in the writ petition that 97 employees included in Ext.P4 list have been granted the benefit of regularisation. This was done in 2005. Thereafter nothing has been done by the respondent-Corporation. Unless the benefit of regularisation is granted, persons like the petitioner will not be able to avail service benefits including terminal benefits on their retirement on superannuation. It will also affect their right to receive emoluments as are sanctioned for the regular establishment post.

2. Counsel for the petitioner submits that Ext.P4 list, though contains the names of so many persons will

have to be short listed after deleting those who have died during the currency of that list, those attained the age of superannuation and those whose names are entered more than once, as can be seen from that list itself. It is also contended that when the names of such persons are removed from Ext.P4 list, the chances of the petitioner for regularisation will get accelerated, and having regard to the work to be carried out by the Corporation utilising the services of persons like the petitioner, he will become entitled for the benefit of regularisation, immediately.

3. In this writ petition the reliefs prayed for by the petitioner are the following:-

> "i) to issue a writ of mandamus commanding respondents 2 and 3 to regularise the service of the petitioner forthwith.
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> ii) to issue any writ, order or direction commanding the respondents 2 and 3 to ascertain the number of vacancies of sanitation workers available in the Corporation with reference to the number of vacancies which were available at the time when the Corporation was Municipality and regularise the service of the petitioner.
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> iii) to issue a writ of mandamus or other appropriate writ, order or direction commanding respondents 2 and 3 to rectify the anomalies crept in Ext.P4 list and issue a revised list with relevant particulars such as date of commencement of service etc.
>
> iv) to declare that the petitioner is entitled to get preference in the matter of regularisation in view of the fact that he has got valid registration with the Employment Exchange since 1984 onwards.

v) to issue a writ of mandamus commanding the respondents to pay equal pay as that of the regularised employees of the same category in view of the accepted principle of equal pay for equal work and in the light of the decision rendered by the Hon'ble Supreme Court.

vi) to issue a writ of mandamus commanding the respondents to pay full wages to the petitioner as that of the CLR employees in other Municipalities/Corporation in the state including arrears thereof forthwith.

vii) to issue any writ, order or direction commanding the respondents to take appropriate action on Exts.P6 and P7 within a time limit.

viii) to issue such other writ, order or direction as this Hon'ble Court may deem fit and proper in the circumstances of this case."

4. Despite several chances given to the respondent-Corporation, no counter affidavit has been filed. At one point of time this Court was constrained to pass interim orders finding that respondents 2 and 3 failed to appear in person or through counsel. Subsequently, the Secretary of the Corporation appeared in person and filed an affidavit expressing his regret. However, nothing useful has been done by the said respondent thereafter also. This indifference continues. Today when the case has been taken up for consideration, none appears for the Corporation. I do not think it necessary to adjourn this case again and again so as to suit the convenience of the respondent-Corporation. The uncontroverted averments made

by the petitioner will have to be accepted as true and reliable. I am convinced that interest of justice requires that the following directions shall be given to the respondent-Corporation:-

(1) The respondent-Corporation shall immediately take up for consideration the need for deleting the names of those whose names are repeated in Ext.P4 list, rather duplicated.

(2) The respondent-Corporation shall also ascertain the details of those who died before and after the publication of Ext.P4 list and the names of those persons removed from the list. Likewise, the names of those who have already attained the age of superannuation also shall be deleted from this list.

(3) After doing that exercise, a fresh list shall be prepared by the Corporation in tune with the directions issued by the Government in Ext.P2 order within a maximum period of two months from the date of receipt of a copy of the judgment.

(4) The right of the petitioner to be regularised shall be taken up depending upon the seniority assigned to him in that list. If it is found that the services of persons who are yet to be granted the benefit of regularisation are required by the Corporation, such

persons shall be given employment according to their seniority as will be reflected from the fresh list and they shall also be granted the benefit of regularisation in terms of Ext.P2 G.O.

(5) The entire exercise shall be completed within four months from the date of receipt of a copy of the judgment.

Writ petition is allowed as above.

K.K.DENESAN
Judge

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